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Counsel for Defendants

IN THE UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA

JUNE HIGGINBOTHAM and  
 JENNIFER RED, on Behalf of  
 Themselves and All Others Similarly  
 Situated,

Plaintiffs,

vs.

KELLOGG COMPANY and  
 KELLOGG SALES CO.,

Defendants.

Case No. 10-cv-255 (MMA) (WVG)

CLASS ACTION

**DEFENDANTS' REQUEST FOR  
 TELEPHONIC CONFERENCE RE:  
 PROPOSED MOTION TO  
 DISMISS**

Hon. Michael M. Anello

Pursuant to the Court's Chamber Rule II, Defendants Kellogg Company and Kellogg Sales Co. ("Kellogg"), by and through their attorneys, respectfully request that the Court schedule a telephonic conference regarding Kellogg's proposed motion to dismiss the above-referenced action. In support of this request, Kellogg states as

1 follows: Plaintiffs June Higginbotham and Jennifer Red ("Plaintiffs") initiated this  
2 action with the filing of a putative class action complaint on February 1, 2010. (Dkt.  
3 1.) Plaintiffs allege that certain labeling on the packaging of Kellogg's Nutri-Grain  
4 Bars and Keebler 100 Calorie Rite Bites is false and/or misleading. Plaintiffs assert  
5 claims under the federal Lanham Act and California's unfair competition and false  
6 advertising laws. On February 23, 2010, this Court granted the parties' joint motion  
7 for extension of time for Kellogg to answer or otherwise respond to Plaintiffs'  
8 complaint. Kellogg's response to the Complaint is currently due on March 19, 2010.

9 Kellogg believes that it has strong grounds for dismissal. Specifically, Kellogg  
10 believes that Plaintiffs' claims are preempted, that Plaintiffs' claims are based on  
11 purported representations that are not actionable as a matter of law, and that Plaintiffs  
12 lack standing to assert any claims against Kellogg. Pursuant to the Court's Chamber  
13 Rule II, Paragraph 1, counsel for Kellogg, Richard P. Steinken, spoke to counsel for  
14 Plaintiffs, Gregory Weston, on March 12, and participated in a telephonic meet and  
15 confer with counsel for Plaintiffs, Gregory Weston and Jared Beck, on March 16.  
16 (Attached hereto as Exhibit A is a Declaration of Compliance with the meet and  
17 confer requirement.) The parties were unable to resolve their differences, and thus  
18 Kellogg desires to file a motion to dismiss the Complaint.

19 Accordingly, Kellogg respectfully requests that the Court schedule a  
20 telephonic conference regarding Kellogg's proposed motion to dismiss.  
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1 Dated: March 17, 2010

Respectfully submitted,

2 /s/ Kenneth K. Lee

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